**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION NO.2017 OF 1995**

Association of Engineering Workers
a Trade Union registered under the
Trade Unions Act, 1926, having its
registered office at 252,
Janata Colony, Ram Narayan
Narkar Marg, Ghatkopar (East),
Bombay 400 077 .. Petitioners

V/s

1. Bombay Forging Private Limited
a Pvt.Ltd.Company incorporated and
registered under the Companies
Act, 1956, having its registered
office at C.S.T. Road, Vidyanagari
Santacruz (East), Bombay 400 098.

2. S.S.Hirurkar,
Member, Industrial Court,
Maharashtra, Bombay, constituted
under Section 4 of the Maharashtra
Recognition of Trade Unions and
Prevention of Unfair Labour
Practices Act, 1971, having his
office at Arun Chambers, 7th Floor,
Tardeo Main Road, Bombay 400 034. .. Respondents

Mr.N.M.Ganguli for the Petitioner.
Mr.C.U.Siongh with Mr.S.R.Pandey for the Respondents.

**CORAM: S.RADHAKRISHNAN &**
**S.A.BOBDE, JJ.**
**DATE : 29.10.2004.**

**JUDGMENT: (Per S.Radhakrishnan, J.)**

1. By this Petition, the Petitioner Union is challenging an order dated 10th May, 1995 passed by the Industrial Court in the Complaint (ULP) No.1179 of 1984 filed by the Petitioner Union.

2. The brief facts are that the Petitioner Union had filed the aforesaid complaint under Sections 28 and 30 read with Items 1, 2, 3 & 6 of Schedule II and Item 9 and 10 of

Schedule IV of the MRTU & PULP Act, 1971 in the capacity of a trade union representing the employees of the Respondent No.1 Company. The Respondent No.1 Company is engaged in the business of manufacture of Iron and Steel forgings for the use in automobile Industry and has a factory at Santacruz, Mumbai. At the relevant time the Respondent No.1 Company appears to have employed over 700 employees in the said factory. It is the contention of the Petitioner Union that the majority workmen of the Respondent No.1 Company joined as members of the Petitioner Union in the year 1980. In the year 1984 the management of the Respondent Company was changed and it is the contention of the Petitioner Union that the said management did not like the Petitioner Union, and to oust them the management resorted to various acts of harassment including pressurising the workmen/members of the Petitioner Union to leave the said Union. On 10th July, 1984 the workmen belonging to the Petitioner Union appear to have put down their tools and walked out of the factory demanding the protection while at work. It is the contention of the Petitioner Union that on the very same day viz.10th July, 1984 the Petitioner Union had given a notice under Section 24(1)(a) of the MRTU and PULP Act, mentioning there that the workmen employed in the Company would go on strike from 27.7.1984 or any day thereafter, after 14 days from the receipt of the said notice. In the annexure to the strike notice it is alleged that on 10th July, 1984 at about 1.30 p.m. some Goondas under the leadership of Mr.Thapa had attacked the workmen on duty with various lethal weapons like swords, guptis chains, pipes, revolvers, knives etc.

because of which many workmen were injured seriously and were hospitalised. It is further mentioned therein that the situation created by this assault on the workmen on duty in the factory premises by the encouragement of the management has made it impossible for the workmen to attend the factory and to perform their usual and normal duties, and as such the said notice of strike was given that they would proceed on an indefinite strike until they were convinced of their safety and peaceful atmosphere inside the factory premises. The Petitioner Union had also filed the aforesaid complaint, complaining thereby that the Respondent No.1 Company was engaged in the unfair labour practices as mentioned in the said complaint. The Industrial Court by its order dated 10.5.1995 dismissed the complaint filed by the Petitioner Union. The Industrial Court by its aforeaid order has clearly held that the Complainant (Petitioner Union) has failed to make out its case and prove the allegation made against the Respondent No.1 Company with regard to the alleged unfair labour practices. Aggrieved by the aforesaid order of the Industrial Court, the Petitioner Union has filed the present Petition.

3. Heard the learned Counsel for the parties. Mr.Ganguli, the learned Counsel for the Petitioner Union has sought to contend that the Industrial Court’s order dismissing the complaint filed by the Petitioner Union is illegal and perverse, and there are errors apparent on the face of the record. However, Mr.Ganguli could not point out the specific errors apparent on the face of the record. He

also could not show that the impugned order passed by the Industrial Court was based on no evidence. In this contenxt it is relevant to refer to the Judgment of the Hon'ble Supreme Court in the case of **Surya Dev Rai V/s Ram Chander Rai and Others - (2003) 6 Supreme Court Cases 675.** In the aforesaid judgment the Hon'ble Supreme Court has dealt with the aspect of scope of interference in such matters. In Paragraph No.20 the Hon'ble Supreme Court has observed as under:-

> "Authority in abundance is available for the proposition that an error apparent on the face of record can be corrected by certiorari. The broad working rule for determining what is a patent error or an error apparent on the face of the record was well set out in Satyanarayan Laxminarayan Hegde V/s. Mallikarjun Bhavanappa Tirumale. It was held that the alleged error should be self-evident. An error which needs to be established by lengthy and complicated arguments or an error in a long-drawn process of reasoning on points where there may conceivably be two opinions cannot be called a patent error. In a writ of certiorari the High Court may quash the proceedings of the tribunal, authority or court but may not substitute its own findings or directions in lieu of the one given in the proceedings forming the subject matter of certiorari."

4.. Perused the Judgment and Order of the Industrial Court dismissing the complaint filed by the Petitioner Union. The Industrial Court has clearly observed that there was no evidence to conclude that the members of the Petitioner Union were not allowed to resume the duties by the Respondent No.1 Company. The Industrial Court has further observed that there is nothing on record to show that the workmen had actually reported for work. The Industrial Court has disbelieved the contention of the Petitioner Union that the members/workmen of the Petitioner Union were willing to resume on duty but they were not allowed to enter into the gate of the factory. The Industrial Court has clearly observed that there was not even a single document produced by the Petitioner Union to show that the Respondent No.1 Company and its management had obstructed the workers/members of the Petitioner Union from entering into the factory premises for work. Ultimately the Industrial Court has given a finding that there was no material to conclude that any of the unfair labour practices (as alleged by the Petitioner Union) was adopted by the Respondent No.1 Company, and as such, rejected the complaint.

5.. Mr.Singh, the learned Counsel for the Respondent No.1 Company has contended that the Industrial Court has rightly rejected the complaint filed by the Petitioner Union. In support of his contention, Mr.Singh, the learned Counsel for the Respondent No.1 Company referred to the evidence led before the Industrial Court. He referred to the

evidence of one Radheshyam Bhagwanprasad Dubey. The said witness in paragraph No.5 of his cross-examination which was recorded on 29.3.1995 has clearly stated that the complainant had given the notice of strike on 10.7.1984 and the same was not taken back till that date he gave the evidence. The said witness has also stated that all the workers had obeyed the order of Union regarding suspension of work from 10.7.1984. Under these circumstances, Mr.Singh, the learned Counsel for Respondent No.1 Company has contended that, on the basis of the material available on record one cannot find fault with the judgment of the Industrial Court declining to interfere in the aforesaid complaint of unfair labour practices.

6.. Having heard the learned Counsel for the parties and after having gone into the scope of interference as laid down by the Hon'ble Supreme Court in the aforesaid case of Surya Dev Rai, we find that the order of the Industrial Court cannot be said to be perverse, illegal or based on no evidence. There is no error apparent on the face of the record. The evidence is very clear to the effect that the Petitioner Union had given a strike notice dated 10th July, 1984 and had gone on strike on the very same day. In fact there is no material to indicate that the workers/members of the Petitioner Union were prevented from entering the factory premises for work. There is also no material to indicate that there was lockout on the part of the Respondent No.1 Company. In fact, the material on record indicate that the factory was very much running even in the absence of the workers/members of the Petitioner Union.

The workmen of the other rival Union appear to have continued to work in the said factory. Under the aforesaid facts and circumstances, we find no illegality or perversity in the impugned order of the Industrial Court. We also do not find any error apparent on the face of the record to interfere. Petition is totally devoid of merits. Hence the Rule stands discharged. Petition stands dismissed.

**(S.RADHAKRISHNAN,J.)**

**(S.A.BOBDE,J.)**